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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,006	01/05/2006	Pierre Messier	102785-337-NP2	9028
24964 7590 02/12/2008 GOODWIN PROCTER L.L.P. 599 LEXINGTON AVE. NEW YORK, NY 10022				
EXAMINER				
DIXON, ANNETTE FREDRICKA				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
02/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,006

Applicant(s)

MESSIER, PIERRE

Examiner

Annette F. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16 and 18-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the request for continued examination filed on December 3, 2007. Examiner acknowledges claims 1-9, 11-16, 18-27 are pending in this application, with claims 1-4, 5, 9, 11, 15, and 16 having been currently amended, with claim 10 and 17 having been cancelled, and with claims 18-27 having been newly added.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 3, 2007 has been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9, 11-16, 18-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rezuke et al. (5,582,865).

As to Claims 1, 2, 7, 8, 9, and 15-16, Rezuke discloses a face mask (Figure 3) having a periphery designed to abut a persons face and a tri-dimensional breathing material (Figures 1, 2, 2a, and 2b) having an electrostatic charge there across; said tri-dimensional breathing material attached to said periphery of said facemask to form a filtering enclosure. (Column 3, Lines 6-10). Regarding the electrostatic charge, Rezuke discloses the absorbent particles may include ion exchange resins and further discloses the use of impregnated iodine. (Column 3, Lines 48-49, and Examples II, VIII, and IX).

As to Claims 3-6, and 11-14, Rezuke discloses the composite filter element (16) is made of a non-woven polyester batting. (Figures 1, 2, 2a, and 2b; and Column 2, Line 45 thru Column 3, Line 20).

As to Claims 18 and 19, Rezuke discloses the fiber matrix is utilized to entrap active agents. (Column 5, Lines 65-67).

As to Claim 20, Rezuke discloses the non-woven material is polypropylene (Column 2, Lines 66-67).

As to Claim 21, Rezuke discloses the use of active agents such as ammonia, which is a biocide. (Column 5, Line 51-52).

As to Claim 22, Rezuke discloses the use of active agents such as Bromine, a halogen (Column 5, Line 31-33), and activated carbon (Columns 4, 5, 6, and 7).

As to Claims 23 and 24, Rezuke discloses the use of metals for the active agent such as zinc chloride (Column 4, Lines 60-67).

As to Claim 25, Rezuke discloses the filter based material includes an electrical charge. (Column 3, Lines 48 and 49).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rezuze et al. (5,582,865) in view of Dhanakoti (4,927,692).

As to Claims 26 and 27, Rezuze discloses a facemask, yet does not expressly disclose the layering of the electrostatic charge and about 25 kilovolts. However, at the time the invention was made the use of a layered electrostatic charge and about 25 kilovolts was known. Specifically, Dhanakoti teaches the use of a multi-layer design (Figure 3c) in the application of electrostatic charges (Column 2, Lines 5-10) to a facemask for the purpose of evenly distributing the electrostatic charge across the facemask thereby reducing charge densities. (Abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Rezuze to include the multilayer electrostatic charge as taught by Dhanakoti, for the purpose of producing a more efficient facemask.

Response to Arguments

7. Applicant's arguments filed December 3, 2007 have been fully considered but they are not persuasive. Applicant asserts Rezuze fails to teach or fairly suggest the

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periphery that contains a permeable filtering material affixed to the periphery. Examiner respectfully disagrees with Applicant's assertion. The mask of Rezuke (Figure 3) is made from the composite materials (seen in Figures 1, 2, 2a, and 2b). The composition of the mask contains a filtering layer, a center composite material layer and a backing layer. As the mask is formed with each of the aforementioned layers, inherently the composite is present on the entire surface of the facemask, including the periphery. Applicant is reminded, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the rejection of claims has been maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Annette F Dixon
Examiner
Art Unit 3771

/Annette F Dixon/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771